

July 26, 1955

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Mr. Herbert L. Whitney
Deputy State Fire Marshal
State House
Concord, New Hampshire

CONCORD, N.H.

Dear Sir:

You have inquired by your letter of July 25, 1955, as to my opinion whether a building within the definition of section 9 of chapter 176 of the Revised Laws meets the requirements of said chapter respecting fire escapes when the building has one adequate fire escape attached to the outside of the building and one inside stairway.

Said section 9 provides that for certain defined buildings there must be "safe and adequate fire escapes consisting of metal stairways, with metal balconies, attached to the outer wall in such manner and place as to render egress from such building easy and safe." This statutory requirement for fire escapes is quite general in its scope and does not attempt to provide or define the type of escape in any detail or the number required or where or how they should be located.

It was the intent of the Legislature that the particular requirements necessary so as to render egress easy and safe be defined and promulgated by the State Board of Fire Control as evidenced by section 11 of chapter 176 as amended by section 3, Part 10, chapter 5 of the Laws of 1950. It is therein provided in the last sentence thereof that the Board is authorized to set such standards defining requirements to insure ready and safe egress in the event of fire.

I am informed that the only appropriate standard of the Board is section 3 of STANDARDS RELATING TO FIRE ESCAPES AND FIRE EXITS, adopted May 11, 1938, by the State Department of Health under whose jurisdiction fire escapes then fell. This section reads as follows:

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"Section 3. More than One Means of Egress to be Provided. Except as may be hereinafter permitted, all of the buildings representing or containing premises as enumerated in section 2 shall be provided with at least two ways of egress from all stories above the first, by stairways on the inside or fire escapes on the outside of such buildings, such stairways to be located remotely from each other, to be convenient of access and to be constructed and maintained as provided hereinafter."

You will note that compliance with this standard would be had if there were at least two inside stairways located remotely from each other. This is a variance of the requirement of the aforementioned section 9 that there must be outside metal fire escapes. Rule making authority does not include authority to promulgate rules, regulations or standards which contradict specific statutory requirements and for this reason the above quoted section 3 does not furnish the proper standard for assuring compliance with said section 9.

Thus we are faced with the specific requirement of section 9 to be implemented by the standards authorized by section 11 with, however, the absence of a proper standard.

I am, therefore, unable to answer your question as the Board has never defined what is required for ready and safe egress. It may well be that one fire escape which complies with the literal terms of said section 9 is all that would be required, but until a standard is properly adopted by the Board guidance in this decision is lacking.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD/aml